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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R2–ES–2013–N147]**

**[FXES11150200000–134–FF02ENEH00]**

**Final Candidate Conservation Agreement with Assurances, Final Environmental Assessment, and Finding of No Significant Impact; Rio Grande Cutthroat Trout, New Mexico and Colorado**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), make available the final Candidate Conservation Agreement with Assurances (CCAA) for the Rio Grande cutthroat trout (*Oncorhynchus clarki virginialis*) in New Mexico and Colorado, as well as the final environmental assessment (EA) and the draft Finding of No Significant Impact (FONSI) under the National Environmental Policy Act of 1969 (NEPA). Vermejo Park, LLC d/b/a Vermejo

Park Ranch applied for an enhancement of survival permit pursuant to the Endangered Species Act of 1973, as amended (Act). The permit application included a draft CCAA between the Service and Vermejo Park Ranch for the Rio Grande cutthroat trout in Taos County, New Mexico, and Costilla County, Colorado. Our decision is to authorize the issuance of an enhancement of survival permit to Vermejo Park Ranch for implementation of the CCAA (Preferred Alternative described below).

**DATES:** We will issue a FONSI and make a final permit decision with the publication of this notice.

**ADDRESSES:** For where to view documents, see **Availability of Documents** in **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Wally Murphy, Field Supervisor, by U.S. mail at U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE, Albuquerque, New Mexico, 87113, or by telephone at 505-346-2525.

**SUPPLEMENTARY INFORMATION:** We announce the availability of the final CCAA for the Rio Grande cutthroat trout, final EA, and FONSI, which we developed in compliance with the agency decision-making requirements of NEPA. All alternatives have been described in detail, evaluated, and analyzed in our May 2013 final EA and the final CCAA.

Based on our review of the alternatives and their environmental consequences as described in our final EA, we have selected Alternative 2, the proposed CCAA for the Rio Grande cutthroat trout

*(Oncorhynchus clarkii virginalis)* in New Mexico and Colorado. The proposed Federal action is the approval of a CCAA, issuance of a section 10(a)(1)(A) enhancement of survival permit to Vermejo Park Ranch, and implementation of the CCAA for the conservation of the Rio Grande cutthroat trout in New Mexico and Colorado. With the assistance of the New Mexico Department of Game and Fish, Colorado Division of Parks and Wildlife, and the Service, Vermejo Park Ranch would implement conservation measures for the Rio Grande cutthroat trout by restoring them to historically occupied streams, removing threats to the survival of the species, and protecting habitat. The CCAA would be in effect for 25 years on lands owned by Vermejo Park Ranch in Taos County, New Mexico, and Costilla County, Colorado. The CCAA was developed in support of a section 10(a)(1)(A) enhancement of survival permit.

By fully implementing the CCAA provisions of the enhancement of survival permit, Vermejo Park Ranch will be provided assurances that, should the Rio Grande cutthroat trout be listed, the Service will not require them to provide additional land, water, or financial resources, nor will there be any further restrictions to their land, water, or financial resources than those they committed to under the CCAA provisions. The CCAA provisions are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d). Furthermore, if the Rio Grande cutthroat trout is listed, Vermejo Park Ranch would be provided incidental take authorization under the enhancement of survival permit for the level of incidental take on their lands consistent with the activities under the CCAA provisions. The term of the CCAA is 25 years from the date the CCAA is signed by Vermejo Park Ranch and the Service. The permit will become effective on the date of a final rule that lists the Rio Grande cutthroat trout as threatened or endangered and will continue through the end of the CCAA term.

## **Background**

The Rio Grande cutthroat trout is native to the Rio Grande, Pecos River, and Canadian River basins in New Mexico and Colorado. It is the southernmost subspecies of cutthroat trout.

Because of nonnative species introductions, Rio Grande cutthroat trout are now restricted to streams that are narrow and small compared to the larger streams they once occupied; these populations occupy approximately 10 percent of historical habitat. Rio Grande cutthroat trout face a variety of imminent threats, including fragmentation, isolation, small population size, presence of nonnative trout, whirling disease, fire, drought, and the effects of climate change.

Because of the range contraction and the imminent threats, the Rio Grande cutthroat trout became a candidate species on May 14, 2008 (73 FR 27900), indicating that listing of the Rio Grande cutthroat trout was warranted but precluded by higher priority actions. The species was given a listing priority number of 9, indicating a subspecies facing imminent threats of moderate to low magnitude.

Currently, cooperative efforts are in place to restore this subspecies to the Rio Costilla watershed, where much of the habitat for Rio Grande cutthroat trout exists on private land. The CCAA was initiated in order to facilitate conservation and restoration of the Rio Grande cutthroat trout on private lands in New Mexico and Colorado. Expected conservation benefits for the Rio Grande cutthroat trout from implementation of the conservation measures in this CCAA will be recognized through additional connected populations being maintained over time.

Furthermore, Rio Grande cutthroat trout conservation will be enhanced by with regulatory assurances for the participating property owner. There will be a measure of security for the participating landowner in the knowledge that they will incur no additional land use restrictions if the species is listed under the Act.

Vermejo Park Ranch requests issuance of the enhancement of survival permit in order to address the take prohibitions of section 9 of the Act should the species become listed in the future. The permit would authorize incidental take associated with implementation of conservation commitments and measures described in the CCAA and existing land uses on Vermejo Park Ranch.

The Secretary of the Interior has delegated to the Service the authority to approve or deny a section (10)(a)(1)(A) permit in accordance with the Act. To act on Vermejo Park Ranch's permit application, we must determine that the CCAA meets the issuance criteria specified in the Act and at 50 CFR 17.22 and 17.32. The issuance of a section (10)(a)(1)(A) permit is a Federal action subject to NEPA compliance, including the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508). The draft CCAA and application for the enhancement of survival permit were not eligible for categorical exclusion under NEPA.

On January 25, 2013 (78 FR 5480), we issued a draft EA and requested public comment on our evaluation of the potential impacts associated with issuance of a permit for implementation of the

CCAA and to evaluate alternatives, along with the draft CCAA. We received no public comments.

### **Purpose and Need**

The purpose of the CCAA is to conserve the ecosystems depended upon by the Rio Grande cutthroat trout in such a way as to potentially preclude the need to list this species under the Act. This purpose, under the CCAA, would be accomplished through the voluntary involvement of Vermejo Park Ranch, who is willing to protect, maintain, enhance, and develop the habitats necessary for the survival and conservation of Rio Grande cutthroat trout on their lands. The purpose of the permit is to provide assurances to Vermejo Park Ranch that no additional conservation measures would be required beyond those specified in the CCAA should the species become listed in the future, as long as Vermejo Park Ranch implements and maintains the conservation measures specified in the CCAA in good faith through the duration of the CCAA and associated permit. Should listing of the Rio Grande cutthroat trout occur, the permit would authorize incidental take associated with implementation of conservation commitments and measures described in the CCAA, as well as existing land uses and other covered activities on Vermejo Park Ranch.

The CCAA and permit are needed to protect and conserve the Rio Grande cutthroat trout through reducing threats that this species faces while providing a mechanism to authorize incidental take of the Rio Grande cutthroat trout, should it be listed pursuant to the Act, for Vermejo Park Ranch.

The Service identified key issues and relevant factors through public scoping and working with other agencies and groups. We received no comments during the public comment period. No new significant issues arose following publication of the draft documents.

## **Alternatives**

*Alternative 1 (No Action):* In the No Action Alternative, the Service would not approve the draft CCAA nor issue the associated section 10(a)(1)(A) enhancement of survival permit. Therefore, a programmatic effort to reduce threats through providing regulatory assurances to Vermejo Park Ranch through a section 10(a)(1)(A) permit of the Act and its implementing regulations, policy, and guidance for CCAAs would not be available. Individual actions and smaller efforts could be undertaken, but the major incentive for Vermejo Park Ranch to conserve a candidate species such as the Rio Grande cutthroat trout would not be in place. The No Action alternative provides the baseline for comparing the environmental effects of the preferred alternative.

*Alternative 2 (Preferred Alternative):* Our selected alternative is the approval and implementation of a CCAA between the Service and Vermejo Park Ranch; this preferred alternative, as described in the final EA, provides for the issuance of a permit pursuant to section 10(a)(1)(A) of the Act to Vermejo Park Ranch for incidental take that is anticipated to occur as a result of implementing the CCAA as proposed. The preferred alternative will provide Vermejo Park Ranch, who has voluntarily agreed to implement conservation measures to restore and maintain suitable habitat for Rio Grande cutthroat trout on their property, regulatory assurances that their conservation efforts will not result in future regulatory obligations in excess of those

they agree to at the time they enter into the CCAA. The CCAA conservation actions to be implemented or maintained are intended to conserve and restore Rio Grande cutthroat trout and their habitat so that sustainable population levels may be maintained. Implementation of these actions is also intended to reduce any unfavorable impacts to Rio Grande cutthroat trout arising from the management and utilization of the enrolled lands, which are expected to be minimal. This alternative includes implementation of conservation measures to avoid and minimize the potential incidental take of Rio Grande cutthroat trout to the maximum extent practicable.

## **Decision**

We intend to issue an enhancement of survival permit allowing Vermejo Park Ranch to implement the preferred alternative (Alternative 2), as it is described in the final CCAA and EA. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails the issuance of the permit, including all terms and conditions governing the permit. Implementation of this decision requires that Vermejo Park Ranch adhere to the conservation measures specified in the CCAA in good faith through the duration of the CCAA and permit.

## **Rationale for Decision**

We have selected the preferred alternative (Alternative 2) for implementation based on multiple environmental and social factors, including potential impacts to the Rio Grande cutthroat trout, the benefits to the Rio Grande cutthroat trout that are expected to be achieved through implementation of conservation actions and measures contained in the CCAA, and social and economic considerations. We did not choose the No Action Alternative because under this

alternative, a programmatic effort to reduce threats to the Rio Grande cutthroat trout by providing regulatory assurances to Vermejo Park Ranch through a section 10(a)(1)(A) permit of the Act and its implementing regulations, policy, and guidance for CCAAs would not be available. Individual actions and smaller efforts could be undertaken, but the major incentive for landowners to conserve a candidate species such as the Rio Grande cutthroat trout would not be in place, and these smaller efforts would be incapable of providing comprehensive or comparable net benefits as compared to those under the preferred alternative.

In order for us to issue a permit, we must ascertain that the CCAA meets the issuance criteria set forth in 16 U.S.C. §1539(a)(2)(A) and (B). In addition, we must determine that the applicant has met all issuance criteria for the permit contained in 50 CFR 17.22(d)(1) and 17.32(d)(1). We have made our determination based on the criteria summarized below:

**1. The taking will be incidental.** We find that the take of Rio Grande cutthroat trout would be incidental to otherwise lawful activities. Vermejo Park Ranch will implement the CCAA, which includes implementation of conservation commitments and measures on their lands as described in the CCAA. Incidental take authorized under the permit would be in the form of harassment, harm, and mortality associated with conservation and monitoring activities necessary to implement the CCAA.

**2. The CCAA complies with the requirements of the CCAA policy.** Vermejo Park Ranch has developed the CCAA and permit application pursuant to the requirements in the implementing regulations and the issuance criteria for a permit. Conservation benefits for the

Rio Grande cutthroat trout from implementation of the CCAA are expected in the form of avoidance of negative impacts; reduction of threats; and conservation, enhancement, and restoration of populations and habitat intended to establish and maintain viable populations of Rio Grande cutthroat trout in Taos County, New Mexico, and Costilla County, Colorado. Also, this CCAA may be used as a model for CCAAs in other parts of the Rio Grande cutthroat trout's range to encourage cooperative management and conservation.

**3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of the survival and recovery in the wild of any species.** The Act's legislative history establishes the intent of Congress that this issuance criteria be identical to a regulatory finding of no "jeopardy" under section 7(a)(2) of the Act. As a result, issuance of this section 10(a)(1)(A) permit was reviewed by the Service according to provisions of section 7 of the Act. In the Intra-Service Section 7 Conference Opinion, the Service concluded that issuance of a permit will not jeopardize the continued existence of the Rio Grande cutthroat trout or any other species. The taking associated with the implementation of the CCAA will be incidental to efforts associated conservation actions for Rio Grande cutthroat trout in their historic range and gathering important biological information necessary to continue conservation efforts for the species.

**4. Implementation of the terms of the CCAA is consistent with applicable Federal, State, and Tribal laws and regulations.** The Service is unaware of any law or regulation that would prevent the implementation of the CCAA and the accompanying permit. The permit will include

conditions that revoke the take provisions of the permit if any applicable State, Federal, or tribal law or regulation is broken.

**5. Implementation of the terms of the CCAA will not be in conflict with any ongoing conservation programs for species covered by the permit.** The CCAA in New Mexico and Colorado for the Rio Grande cutthroat trout furthers ongoing conservation activities for the species' conservation and is essential in developing additional conservation agreements within the historic range of the Rio Grande cutthroat trout. The Service is a participant on the Rio Grande Cutthroat Trout Conservation Team, which is a consortium of agencies that has been working together to conserve, restore, and enhance Rio Grande cutthroat populations rangewide. This combined State, Federal, Tribal, and private effort should provide conservation incentives and result in greater success in reducing threats and stabilizing the status of Rio Grande cutthroat trout.

**6. The Applicant has shown capability for and commitment to implementing all of the terms of the CCAA.** Vermejo Park Ranch has shown the ability to administer the CCAA and work effectively with cooperators to implement conservation commitments in the CCAA. The funding for implementation will come from several sources and is already in place. Vermejo Park Ranch will also have assistance from the Service, New Mexico Department of Game and Fish, and Colorado Division of Parks and Wildlife in determining the conservation priorities. Based on conservation measures described in the CCAA, the Service does not expect any circumstances to occur that would preclude Vermejo Park Ranch's funding and implementation of the CCAA.

Section 9 of the Act and its implementing regulations prohibit the “taking” of threatened or endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not for the purpose of, otherwise lawful activities.

### **Availability of Documents**

Electronic copies of the final CCAA and final EA will be available on the Service’s New Mexico Ecological Services Field Office website,

<http://www.fws.gov/southwest/es/NewMexico/VRCCAA.cfm>. Alternatively, you may obtain CD-ROMs with electronic copies of these documents by writing to Mr. Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, 2105 Osuna Rd NE, Albuquerque, NM 87113; calling 505–346–2525; or faxing 505–346–2542. The final CCAA and final EA also are available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Albuquerque address listed above.

Persons wishing to review the application or FONSI may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

### **Authority**

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1506.6).

**Date:** June 21, 2013

Joy E. Nicholopoulos, Acting

**Regional Director, Southwest Region,  
Fish and Wildlife Service.**

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